

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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JOSEPH NOETHE and CHRISTINA M.  
NOETHE, Natural Guardians and Next  
Friend of H.C.N., a minor, and as  
individuals and husband and wife,

Plaintiffs,

vs.

REGIONAL HEALTH NETWORK, INC.,  
d/b/a REGIONAL HEALTH  
SPEARFISH HOSPITAL, d/b/a  
REGIONAL HEALTH MEDICAL CLINIC,  
d/b/a SPEARFISH REGIONAL  
MEDICAL CLINIC, d/b/a QUEEN CITY  
REGIONAL MEDICAL CLINIC, d/b/a  
SPEARFISH REGIONAL HOSPITAL, a  
South Dakota corporation, REGIONAL  
HEALTH PHYSICIANS, INC., a South  
Dakota corporation, REBECCA L.  
KNUDSON, M.D., an individual, RAPID  
CITY REGIONAL HOSPITAL, INC.,  
d/b/a REGIONAL HEALTH RAPID CITY  
HOSPITAL, d/b/a REGIONAL HEALTH  
MEDICAL CLINIC, a South Dakota  
corporation, STEVEN L. BENN, M.D.,  
an individual, REGIONAL HEALTH  
INC., a South Dakota corporation,  
REGINA M. REYNOLDS, M.D., and  
CHILDREN'S HOSPITAL COLORADO  
HEALTH SYSTEM, a Colorado  
Corporation,

Defendants.

CIV. 18-5082-JLV

ORDER

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Plaintiffs, acting through counsel, brought this medical malpractice action  
on behalf of their minor child, H.C.N., "and on behalf of themselves as

individuals[.]” (Docket 24 at ¶¶ 2-3). The court permitted plaintiffs’ counsel to withdraw and plaintiffs informed the court they intend to proceed *pro se*. (Dockets 88 & 89). The court then entered an order requiring plaintiffs to obtain counsel if they wished to pursue claims on behalf of their child, citing the well-established rule that parents may not represent their children *pro se*. (Docket 90). Plaintiffs did not obtain counsel within the deadline the court set, nor did they move for an extension of that deadline.

The court now dismisses all claims in the first amended complaint brought on behalf of H.C.N. without prejudice. See Berrios v. N.Y. City Hous. Auth., 564 F.3d 130, 134 (2d Cir. 2009); Estate of Montileaux v. Farmers State Bank in Winner, S.D., No. Civ. 05-5049, 2005 WL 3088610 at \*4 (D.S.D. Nov. 16, 2005). The court makes no ruling on the merits of H.C.N.’s claims. Berrios, 564 F.3d at 135 (“Where the owner of a claim is a [*pro se*] minor . . . the court should not issue a ruling as to whether the complaint states a claim on which relief may be granted.”). H.C.N. is no longer a party to this case and future pleadings shall remove her from the case caption.

Plaintiffs as parents may have claims of their own they wish to pursue. See Hoglund v. Dakota Fire Ins. Co., 742 N.W.2d 853, 857-58 (S.D. 2007) (discussing parental claims derived from medical malpractice against child); Knowles v. United States, 544 N.W.2d 183, 192-94 (S.D. 1996) (same), superseded by statute on other grounds as recognized by Peterson ex rel. Peterson v. Burns, 635 N.W.2d 556, 569-70 (S.D. 2001). Plaintiffs may proceed

by filing a notice specifying which portions of their amended complaint allege claims on their own behalf or by moving to file a second amended complaint.

Their notice or motion to amend the complaint must be filed by **June 1, 2020**.

If plaintiffs do not do so, notice is given that the court will dismiss whatever claims may remain for failure to prosecute. See Fed. R. Civ. P. 41(b).

For the reasons given above, it is

ORDERED that all claims in the amended complaint brought on behalf of H.C.N. are dismissed without prejudice.

IT IS FURTHER ORDERED that H.C.N. is removed as a plaintiff in this case. All future filings shall remove H.C.N. from the case caption.

IT IS FURTHER ORDERED that plaintiffs shall, on or before **June 1, 2020**, either: (1) file a notice specifying which portions of their amended complaint allege claims on their own behalf, independently of H.C.N., that they wish to pursue; or (2) move for leave to file a second amended complaint, with a brief detailing supporting legal authority. Notice is hereby given that if plaintiffs fail to make either filing, or to seek an extension of the deadline for good cause, the court will dismiss this case for failure to prosecute.

Dated April 29, 2020.

BY THE COURT:

/s/ *Jeffrey L. Viken*

JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE